

In the Court of Appeals of the State of Alaska

Lincoln N. Riley,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13199**

Order

Third Motion to Supplement Statement
of Points on Appeal

Date of Order: **1/8/2021**

Trial Court Case No. **3PA-13-01289CR**

Attorney Marilyn J. Kamm, representing the Appellant, Lincoln N. Riley, has filed a motion requesting to amend the points on appeal and to allow supplemental briefing. Ms. Kamm explains that after reviewing the grand jury transcript, she discovered an additional potential claim of error that should be raised in this appeal. In particular, she asserts she discovered that the same grand jury panel that indicted Riley in this case for sexual assaults had also indicted him two months earlier in a different case for sexual assaults (*see Riley v. State*, A-13345). Ms. Kamm now wants to amend the points on appeal and to brief whether the indictment in this case should have been dismissed due to the grand jury's implied bias against Riley resulting from having recently indicted him for the other sexual assaults.

The State opposes the Appellant's motion, primarily citing the current procedural posture of this case — both the Appellant's and the State's opening briefs have been filed, and the Appellant's reply brief is now due (Ms. Kamm has requested an extension of the reply brief's due date). The State also points out that the Appellant has failed to cite where in the trial court record Riley challenged the grand jury on the basis

of potential bias. The State contends that absent proof that the issue was preserved, there is no reason to further delay the resolution of this appeal (which was filed in July of 2018).

The Court agrees that considering the age and the current procedural posture of this case, if the issue was not preserved in the trial court, then there is no good cause to grant the Appellant leave to supplement the points on appeal and to allow another round of briefing. However, the Court will hold this motion in abeyance and allow Ms. Kamm a short time to determine whether the issue of grand jury bias was raised in the trial court.

IT IS ORDERED:

1. The motion to amend the points on appeal and to allow supplemental briefing shall be **HELD IN ABEYANCE**, and the due date for the reply brief is **VACATED**.

2. Ms. Kamm shall determine whether the issue of potential grand jury bias was raised in trial court. She shall notify this Court of her findings on or before **January 19, 2021**. If this issue was not preserved, then her motion is **DENIED**, and the Appellant's reply brief is due on or before **January 19, 2021**. If Ms. Kamm finds that the issue was preserved in the trial court, then this Court will renew its consideration of her motion.

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Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

A handwritten signature in cursive script that reads "Joyce Marsh".

Joyce Marsh, Deputy Clerk

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